

WAUKESHA COUNTY BOARD OF ADJUSTMENT

SUMMARY OF MEETING

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, September 28, 2005, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Paul Schultz
Walter Tarmann
Ray Dwyer

BOARD MEMBERS ABSENT: Walter Schmidt

SECRETARY TO THE BOARD: Mary E. Finet

OTHERS PRESENT:

Town of Merton Board of Adjustment
Terry and Elizabeth Dow, BA05:065, petitioners
Jeff Eichstaedt, BA05:065, neighbor
James and Kathryn Kline, BA05:065, neighbors
Dan Mokros, BA05:065, neighbor
Ken Wysocki, BA05:065, neighbor
Herman Fillinger Jr., BA05:069, petitioner
Mary Linn, BA05:070, petitioner
W. Kent Johnson, BA05:070, architect
Sandra Murray, BA05:070, neighbor
Marilyn Clark, BA05:070, neighbor
John and Catherine Robertstad, BA05:071, petitioners
David Treichel, BA05:071, builder
Lauren and Dave Smith, BA05:071, neighbors
Jeffrey Short, BA05:072, petitioner
Dennis Robus, BA04:085, agent
Peggy Pelikan, BA04:085, Planning and Zoning Division staff

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Tarmann *I move to approve the Summary of the Meeting of September 14, 2005.*

The motion was seconded by Mr. Bartholomew and carried with four yes votes. Mr. Dwyer abstained because he was not present at that meeting.

NEW BUSINESS:

BA05:065 TERRY AND ELIZABETH DOW

Mr. Bartholomew *I make a motion to approve the request in accordance with the staff's recommendation, as stated in the Staff Report, with the conditions recommended in the Staff Report.*

The motion was seconded by Mr. Dwyer and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The proposed Certified Survey Map must be reviewed and approved by the Planning and Zoning Division staff, prior to its recordation in the Waukesha County Register of Deed's office.
2. The proposed Certified Survey Map must indicate the 100-year flood elevation line of 869 ft. above mean sea level and the wetland boundary and show a building envelope at least 50 ft. from both the wetland boundary and the 100-year floodplain.
3. The proposed Certified Survey Map must contain preservation restrictions to protect the wetland and floodplain areas.
4. Prior to approval of the Certified Survey Map, it must be verified by a registered Land Surveyor or Professional Engineer that the elevation of the proposed building envelope is at least 2.5 ft. above the 100-year flood elevation of 869 ft. above mean sea level.
5. The lowest level of the proposed residence must be at or above 100-year flood elevation of 869 ft. above mean sea level and the finished grades adjacent to the proposed residence must be at least three (3) ft. above the 100-year flood elevation (at least 872 ft. above mean sea level). This condition must be noted on the proposed Certified Survey Map.
6. The proposed Certified Survey Map must contain a restriction that no fill may be placed outside of the designated building envelope.
7. Prior to approval of the Certified Survey Map, a copy of a Soil Evaluation Report (soil boring report) verifying that the proposed vacant lot contains suitable soils for an On-site Sewage Disposal System, based on the Waukesha County Code of Ordinances Regulating On-Site Sewage Disposal Systems, must be submitted to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It would be unnecessarily burdensome to deny the requested variance, since the existing lot is substantially larger than other lots in the area and could be divided if the elevation of the second building site were only six (6) inches higher. Further, there is some doubt that the area mapped

as floodplain on the Subdivision Plat of Lower Lake View Estates is truly within the 100-year floodplain, since it is not connected to a flow-through lake or a river system and it is not designated as 100-year floodplain on the FEMA Flood Insurance Maps. The proposed building envelope is outside of the Primary Environmental Corridor and conforms with the wetland setback requirement and all other locational requirements. The approval of this request, with the recommended conditions, will not adversely affect the wetland or floodplain and is not contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA05:069 HERMAN FILLINGER JR.

Mr. Schultz

I make a motion to adopt the staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The proposed garage must be reduced in size so that it has a floor area, as measured to the outer edges of the walls, of no more than 1,076 sq. ft. This will allow the construction of a new garage with a floor area that is equivalent to the combined floor area of the existing garage, carport, and sheds.
2. The overhangs on the new garage must not exceed two (2) ft. in width.
3. The new garage must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured from the lowest exposed point to the peak of the roof, must not exceed 18 ft.
4. As long as the garage conforms with the height requirement noted above, it may contain an upper-level storage area, but there may not be a permanent staircase to the upper-level storage area. If the garage contains an upper-level storage area, it may be accessed via pull-down stairs.
5. Plans for the proposed garage, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit.
6. The new garage must be at least 10 ft. from the east lot line, as measured to the outer edge of the wall, and no closer to the west lot line than the existing carport.
7. Changes to the existing grades around the new garage will not be permitted.
8. The new garage must be located in conformance with the road setback requirement, as modified by road setback averaging and with a "sewer reduction". Note: This will require the garage to be at least 21.5 ft. from the centerline of the road right-of-way.
9. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all existing structures and the location of the proposed detached garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.

10. A Certified Survey Map, encompassing all four lots of record, must be prepared by a registered land surveyor and submitted to the Town of Oconomowoc and the Planning and Zoning Division staff for review and approval. The Certified Survey Map shall combine Lots 13 and 14 into one lot and Lots 22 and 23 into one lot and it must contain a restriction that the newly combined lots shall not be sold separately. The Certified Survey Map must be recorded in the Waukesha County Register of Deed's office, prior to the issuance of a Zoning Permit.
11. The two non-conforming sheds must be removed from the property no later than twelve (12) months after the issuance of a Zoning Permit for a new detached garage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Denial of the requested variances would not permit the construction of even a minimally-sized two-car detached garage on the property. Further, it is felt it would be unnecessarily burdensome not to permit the new garage to be as large as the combined area of the existing garage, carport, and storage sheds that it would be replacing. Granting a variance from the required shore and conservancy/wetland setback, but requiring the new garage to be located no closer to the pond than the existing carport, as recommended, will protect the environmentally sensitive, steeply sloped area between the garage and the pond, which is in the public interest. Granting an offset variance to allow the new garage to be located as close as 10 ft. to the east lot line, as recommended, will maximize the width of the new garage that can be constructed without infringing further on the shore and conservancy/wetland setback or being located closer to the steeply sloped area. Therefore, the approval this request, with the recommended modifications and conditions, is in conformance with the purpose and intent of the Ordinance.

BA05:070 ANTHONY AND MARY LINN

Mr. Dwyer *I move to deny the request in accordance with the staff's recommendation, for the reasons set forth in the Staff Report.*

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for denial. The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Denial of the requested variances will not prevent the property from being used for the permitted purpose of single-family residential use and would not be unnecessarily burdensome, since the property already contains a single-family residence.

Denial of a floor area ratio variance is not unnecessarily burdensome because the maximum permitted floor area ratio of 15% allows a total floor area of 3,019 sq. ft. After the property is served by municipal sewer, the maximum permitted floor area ratio, with a “sewer reduction” would allow a total floor area of 3,925 sq. ft. Granting the requested variance to remodel a non-conforming structure in excess of 50% of its fair market value to permit the residence to be extensively remodeled and expanded would only prolong the life of a severely non-conforming structure, which would be contrary to the public interest and not in conformance with the purpose and intent of the Ordinance. Similarly, granting the requested special exception from the offset requirement would also prolong the life of a severely non-conforming structure. Finally, if the existing residence does not meet the needs of the owners, the lot is of sufficient size, width, and depth to allow a new residence to be constructed in a conforming location. Therefore, the approval of this request would not be in conformance with the purpose and intent of the Ordinance.

BA05:071 JOHN AND CATHERINE ROBERTSTAD

Mr. Bartholomew

I make a motion to deny the request for a floor area ratio variance to permit the construction of a boathouse, to deny the request for an offset variance to permit an addition to the residence to be located less than 20 ft. from the side lot line, but to approve a floor area ratio variance to permit the construction of an addition to the residence, subject to the following conditions:

- 1. The addition must be at least 20 ft. from the side lot line, in conformance with the offset requirement.*
- 2. The addition cannot exceed 256 sq. ft., which will result in a floor area ratio of approximately 17.2%*
- 3. The other conditions of approval shall be the standard conditions requiring construction plans, a Plat of Survey showing the proposed addition, a grading and drainage plan if there will be any changes to the existing grades, and a favorable “Preliminary Site Evaluation” of the septic system from the Environmental Health Division.*

The reasons for this decision are as follows:

A floor area ratio variance to permit an addition to the residence is warranted because the residence is in a conforming location and meets all offset and setback requirements of the Ordinance, as will the addition, as conditioned. The resulting floor area ratio, with just the addition to the residence, doesn't severely compromise the spirit and intent of the Ordinance. The addition to the residence would not decrease the amount of open space because it would be located in the area of an existing deck. An offset variance for the proposed addition to the residence

is not warranted because the addition could be re-designed to conform with the offset requirement. Approval of a floor area ratio variance to permit the proposed boathouse would result in a floor area ratio that is too high. Finally, the proposed boathouse is more than a boathouse - it is a garage/boathouse.

The motion was seconded by Mr. Schultz and carried with four yes votes. Mr. Dwyer voted no.

The staff's recommendation was for denial. The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Denial of the requested variances will not prevent the property from being used for the permitted purpose of single-family residential use and would not be unnecessarily burdensome, since the property already contains a large three-bedroom single-family residence with an attached garage. Further, the maximum permitted floor area ratio has already been exceeded by the existing residence and attached garage and while the petitioners may desire a larger master bedroom and a boathouse, neither is necessary for a reasonable use of the property. Therefore, the approval of this request would not be in conformance with the purpose and intent of the Ordinance.

BA05:072 JEFFREY AND CATHERINE SHORT

Mr. Dwyer

I move to approve the request in accordance with the staff's recommendation, subject to the conditions recommended in the Staff Report and for the reasons stated in the Staff Report.

The motion was seconded by Mr. Tarmann and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The proposed second floor modifications and the proposed first floor addition over the existing basement-level addition on the west side of the residence shall be permitted, provided the existing second floor bedroom is removed to create a cathedral ceiling in the living room, as proposed.
2. A covered porch, extending no more than 8 ft. from the lake side of the residence and with a maximum width of 18 ft., may be constructed on the lake side of the residence. A covered porch, extending no more than 8 ft. from the road side of the residence and with a maximum width of 14 ft., may be constructed on the road side of the residence. Note: This will require a two ft. reduction in the width of the proposed covered porch on the road side of the residence.

3. The covered porches may not be permanently or temporarily enclosed by any means and a Declaration of Restrictions to that effect must be recorded in the Waukesha County Register of Deeds Office, prior to the issuance of a Zoning Permit.
4. The existing unauthorized and non-conforming deck on the road side of the residence must be removed, no later than twelve (12) months after the issuance of a Zoning Permit for the proposed remodeling.
5. Stairs from the proposed covered porch on the road side of the residence shall be permitted, provided they do not exceed 4 ft. in width.
6. Prior to the issuance of a Zoning Permit, a complete set of plans for the remodeling, including the proposed covered porches and any proposed stairs from the covered porch on the road side of the residence, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
7. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all existing structures and the location of the proposed covered porches and any proposed stairs from the covered porch on the road side of the residence, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
8. A Certified Survey Map, encompassing all three lots of record, must be prepared by a registered land surveyor and submitted to the Town of Oconomowoc and the Planning and Zoning Division staff for review and approval. The Certified Survey Map shall combine Lots 18 and 19 into one lot and contain a restriction that the newly combined lot and the former Lot 17 shall not be sold separately. The Certified Survey Map must be recorded in the Waukesha County Register of Deed's office, prior to the issuance of a Zoning Permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It is felt that it would be a hardship not to grant a variance from the remodeling non-conforming structure in excess of 50% of its fair market value provision and to provide relief from the floor area ratio, open space, and road setback requirements.

Structural changes are required to eliminate the existing unsafe second floor bedroom, but they cannot be permitted without a variance to remodel a non-conforming structure because the cumulative 50% limit has already been exceeded. The proposed second floor addition will result in a net increase to the floor area of only 180 sq. ft., but it will allow the existing unsafe second floor bedroom to be eliminated. Although the basement-level addition was constructed without permits and without the necessary variances, it is a minor expansion in a conforming location. Permitting that unauthorized addition to remain and allowing the construction of a first floor addition above it will not adversely affect the lake or the adjoining property owners and is not contrary to the public interest.

The proposed covered porches are also not contrary to the public interest will not adversely affect the lake or the adjoining property owners. They will greatly enhance the appearance of the residence, while not significantly impacting the floor area ratio and open space on the property. However, since variances should only be granted to provide the minimum relief necessary for a reasonable use of the property, it is felt that they should be allowed to extend no more than 8 ft. from the residence. The proposed covered porch on the lake side of the residence conforms with the shore setback requirement, utilizing the shore setback averaging provision of the Ordinance, and it will be located in an area already occupied by an existing deck. Finally, granting a road setback variance to permit a covered porch on the road side of the residence, with the recommended modifications and conditions, will not result in a safety hazard since Peterson Dr. is a minor dead-end road that serves only one residence beyond the subject property. Therefore, the approval of the requested variances, with the recommended modifications and conditions, is in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA04:085 BOB WILSON (Rustic Inn)

Mr. Dwyer *I move to reconsider the previous conditions of approval, based upon the change in circumstances.*

The motion was seconded by Mr. Tarmann and carried unanimously.

Mr. Tarmann *I move to revise Condition No. 3 and Condition No. 4 of our decision of November 11, 2004, as recommended in the Staff Memorandum, for the reasons stated in the Staff Memorandum. All other previous conditions of approval shall remain the same.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was to amend Condition No. 3 and Condition No. 4 of the approval of November 11, 2004, as follows:

Revised Condition No. 3: All proposed parking on the private property must be located a minimum of 50 ft. from the centerline of Brown Street. Any existing parking on Brown Street must be relocated to the new parking lot south of the building. The five (5) proposed parallel parking spaces to be located along the curb and gutter of Brown Street may be allowed and there shall be a minimum of 29 ft. from the centerline of Brown St. to the face of the curb. The curb may be transitioned to tie back into the entrance to the parking lot and the curb near the intersection of Mapleton and Brown St. The parking stalls on the curb must be marked and all areas of curb that do not have designated parking stalls shall be painted yellow to indicate no parking, see the revised plan attached as Exhibit "D." These five parking spaces may only be allowed if approved by the Waukesha

County Department of Public Works and the Waukesha County Park and Planning Commission. The parking lot proposed to the south shall be redesigned and enlarged to accommodate the needed off-street parking. The new parking area shall be paved and striped upon the occupancy of the newly expanded restaurant. It is further recommended that the Board of Adjustment and Planning and Zoning Division staff strongly urge the Town of Oconomowoc to abandon the alley on the west side of the property, which does not function as an alley, and allow that additional space to be used for parking and/or access.

Revised Condition No. 4: Lots 5, 6, 7, 8, and 9 of Mapleton must be combined by a Certified Survey Map. The Certified Survey Map would need to be approved by the Town of Oconomowoc, any applicable departments or divisions of Waukesha County, and the City of Oconomowoc prior to the issuance of a temporary occupancy permit. If the Certified Survey Map is not recorded by December 1, 2005, the temporary occupancy permit will be revoked.

The reasons for the recommendation, as stated in the Staff Memorandum, are as follows:

As redesigned, the additional parking spaces will be beneficial due to the size of the newly expanded restaurant and will be designed to minimize the existing parking area conflicting with Brown St. traffic. The revisions to Condition No. 4 will allow the petitioner to have temporary occupancy of the restaurant while working out the final details of the Certified Survey Map. As conditioned, if the Certified Survey Map has not been recorded by the date imposed, the temporary occupancy permit will be revoked. The approval of the revisions to the conditions previously imposed by the Board will be within the purpose and intent of the Ordinance.

ADJOURNMENT:

Mr. Bartholomew *I make a motion to adjourn this meeting at 10:00 p.m.*

The motion was seconded by Mr. Schultz and carried unanimously.

Respectfully submitted,

Mary E. Finet
Secretary, Board of Adjustment